

**DEC 20 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

DUNCAN WILLIAM EDWARDS,

Defendant - Appellee.

No. 04-30451

D.C. No. CR-03-00058-DWM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Argued and Submitted September 15, 2005  
Seattle, Washington

Before: SCHROEDER, Chief Judge, ALARCÓN and KLEINFELD, Circuit Judges.

The United States appeals a sentence imposed upon defendant Duncan William Edwards following his guilty plea conviction for bankruptcy fraud, in violation of 18 U.S.C. § 152(9) and making false statements to a bank, in violation of 18 U.S.C. § 1014. The court sentenced the defendant to seven months house

---

<sup>\*</sup>This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

arrest followed by five years probation. The presentence report had recommended a sentence enhancement, but the district court felt itself bound by the then recent three judge panel decision in United States v. Ameline, 376 F.3d 967 (9th Cir. 2004) (Ameline I). Under that decision, the court was precluded from relying on any factors not found by the jury in determining defendant's sentence.

We subsequently ordered Ameline I reheard en banc, after the Supreme Court's decision in United States v. Booker, 543 U.S. \_\_\_\_\_, 125 S.Ct. 738 (2005). We held that where, as here, a district court believed itself bound by pre-Booker law, we should remand for the district court to determine whether it would have imposed a different sentence had it understood that the Guidelines were advisory. United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) (Ameline II). Accordingly, the parties agree that we must, at least, remand this case under Ameline II.

The government asks us further to hold, as a matter of law, that the sentence imposed was unreasonable pursuant to 18 U.S.C. § 3553(a)(2). This we decline to do. The sentence imposed after the Ameline remand may well be different from the sentence imposed, and the government will be free to argue at that point, if it so desires, that the remaining sentence is unreasonably low. Moreover, we believe

that the orderly development of the law under § 3553(a)(2) would be furthered by the district court's addressing the reasonableness issue in the first instance.

The remaining contention that Booker violates ex post facto principles has been decided in United States v. Dupas, 419 F.3d 916 (9th Cir. 2005). There is no ex post facto violation.

Pursuant to Ameline, the sentence is REMANDED.